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A LAW CORPORATION

May 26, 2022

## VIA ONLINE SUBMISSION

United States Environmental Protection Agency  
Regional Freedom of Information Officer  
U.S. EPA, Region IX  
75 Hawthorne Street (ORC-1)  
San Francisco, CA 94105  
(415) 947-4251

### *Re: Freedom of Information Request*

Dear Sir or Madam:

This law firm represents Sergio Vasquez, the tenant of the property located at 959 Kamilonui Place, Honolulu, Hawai'i 96825 (**Property**). On Mr. Vasquez's behalf,<sup>1</sup> and pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (**FOIA**), I am requesting copies<sup>2</sup> of all files, documents, and/or records (collectively, **Records**) identified in *Section B* of this correspondence.

In addition, I am requesting that the Records be furnished without charge<sup>3</sup> insofar as disclosure is in the public interest where the information sought is likely to contribute significantly to public understanding of the operations or activities of the government, and because disclosure is not primarily in Mr. Vasquez's commercial interests. *See* 5 U.S.C. § 552(a)(4)(A)(iii).<sup>4</sup> If Mr. Vasquez's request for a fee waiver is denied, Mr. Vasquez asks that if fees incurred will exceed Five Hundred Dollars (\$500.00), that he be informed, through the undersigned, before you fill the request.

### **A. Relevant Background.**

On or about September 27, 2018, the United States Environmental Protection Agency, Region IX (**EPA**), and the Trustees of the Estate of Bernice Pauahi Bishop, d.b.a. Kamehameha

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<sup>1</sup> A request made pursuant to the Freedom of Information Act (**FOIA**) may be made by "any person," (*see* 5 U.S.C. § 552(a)(3)), and a "person" can make a request through an attorney or representative. *See, e.g., Constangy, Brooks & Smith v. NLRB*, 851 F.2d 839, 840 n. 2 (6th Cir. 1988) (citing *Rushforth v. Council of Econ. Advisors*, 762 F.2d 1038, 1039 n. 3 (D.C. Cir. 1985)).

<sup>2</sup> Copies of the Records requested herein may be produced as physical copies or in a digital format.

<sup>3</sup> Or, alternatively, at a significantly reduced charge.

<sup>4</sup> As you are aware, pursuant to 5 U.S.C. § 552(a)(4)(A)(iv)(II), you are required to provide the first two hours or search time or the first 100 copies of responsive Records at no charge. Regardless, Mr. Vasquez is requesting a waiver of all fees for the reasons addressed in *Section C* of this correspondence.

Schools (**KS**) entered into a Consent Agreement and Final Order (**CA/FO**),<sup>5</sup> which resolved the civil administrative proceeding brought by the EPA against KS pursuant to § 1423(c) of the Safe Drinking Water Act (**SDWA**), 42 U.S.C. § 300h-2(c), for violations of the SDWA, and the Underground Injection Control requirements set forth in 40 C.F.R. Part 144. *See Ex. 1* at 1-2 (¶¶ 1-2). The CA/FO alleged *inter alia* that KS owned or leased at least 3,000 properties in the State of Hawai‘i, and that certain of those properties contained prohibited Large Capacity Cesspools (**LCCs**).<sup>6</sup> *See id.* at 4 (¶ 19).

As part of the terms of settlement between the EPA and KS, KS agreed, among other things, to perform a compliance audit (**Audit**) of its properties in the State of Hawai‘i to identify and close the prohibited LCCs. *Id.* at 8 (¶ 44). The Audit was to take place over three phases. Phase I required the auditor to identify all “Target Properties”<sup>7</sup> on the island of Oahu. Phase II required the auditor to identify all Target Properties on the islands of Kauai, Maui, and Molokai. Phase III required the auditor to identify all Target Properties on the island of Hawai‘i. *See, generally, id.* at 8-13 (¶¶ 46(a)-(c)).

In short, the Audit required (1) inspections to identify Target Properties, (2) submission of “Inspection Phase Completion Reports”<sup>8</sup> documenting the auditor’s findings during the inspections and otherwise setting forth a plan for closure of any identified LCCs, and (3) submission of “Final LCC Closure Reports”<sup>9</sup> describing and documenting completion of the LCC closure plans.

As part of Phase I of the Audit, the Property was identified as a Target Property.<sup>10</sup> We understand there were various other properties located in the Kamilo Nui Valley in Hawaii Kai on the island of Oahu<sup>11</sup> that were likewise identified as Target Properties.

## **B. The Requested Records.**

Pursuant to this FOIA request, please produce the following Records:

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<sup>5</sup> A copy of the CA/FO is attached hereto as **Exhibit 1**.

<sup>6</sup> LCCs include “multiple dwelling, community or regional cesspools, or other devices that receive sanitary wastes, containing human excreta, which have an open bottom and sometimes perforated sides.” 40 C.F.R. § 144.81(2); *see also, Ex. 1* at 2-3 (¶ 10). LCCs do not, however, include single-family residential cesspools or non-residential cesspools which receive solely sanitary waste and have the capacity to serve fewer than 20 persons per day.” *Id.*

<sup>7</sup> Any properties containing LCCs were referred to as “Target Properties.” *See Ex. 1* at 8 (¶ 46(a)(i)).

<sup>8</sup> For each phase of the inspections, “Inspection Phase Completion Reports” were required to be submitted, which documented the auditor’s findings with respect to the inspection of the Target Properties in that particular phase. *See Ex. 1* at 14-15 (¶ 47).

<sup>9</sup> “Final LCC Closure Reports” described and documented the completion of the LCC closure steps. *See Ex. 1* at 15 (¶ 49).

<sup>10</sup> KS is the owner of the Property, and Mr. Vasquez is a tenant of KS.

<sup>11</sup> The Property is located in the Kamilo Nui Valley.

- *Records concerning the inspection of the Property and/or all other Target Properties in the Kamilo Nui Valley in Hawaii Kai on the island of Oahu.*
- *The Phase I Inspection Phase Completion Reports, and, in particular, Inspection Phase Completion Reports pertaining to or referencing any Target Properties in the Kamilo Nui Valley.*
- *The Phase I Final LCC Closure Reports, and, in particular, Final LCC Closure Reports pertaining to or referencing any Target Properties in or around the Kamilo Nui Valley.*
- *Records concerning any fines, fees, and/or penalties assessed (or to be assessed) against KS (or any of KS's tenants) in relation to Phase I of the Audit, and, in particular, any fines, fees, and/or penalties assessed (or to be assessed) against any Target Properties located in the Kamilo Nui Valley.*

**C. All Fees Incurred in Complying With this Request Should Be Waived.**

5 U.S.C. § 552(a)(4)(A)(iii) provides:

Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

5 U.S.C. § 552(a)(4)(A)(iii). Construing the statute, the FOIA “sets forth a two-part test for determining whether documents shall be furnished without any charge (or at a reduced charge).” *Project on Military Procurement v. Dept. of Navy*, 710 F.Supp. 362, 365 (D.C. 1989). Under the test, “the requestor must establish that the information sought (1) ‘is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government’ and (2) ‘is not primarily in the commercial interest of the requester.’” *Id.* (quoting 5 U.S.C. §552(a)(4)(A)(iii)).

With respect to the first prong of the test, *i.e.*, whether the information sought is in the public interest, there are four criteria that courts look to: (1) operations or activities of government as the subject of the FOIA request; (2) informative value, or potential for contribution to public understanding; (3) public understanding as the result of disclosure; and (4) significance of the disclosure's contribution. *See id.*; *see also, McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285-86 (9th Cir. 1987).

Here, Ms. Vasquez is seeking the Records requested because he is one of several farmers working in or around the Kamilo Nui Valley who have been adversely impacted by demands for removal of LCCs, at the tenants’ full or partial cost, and he desires more information on how the Audit was undertaken, what evaluative criteria was used, if any, to identify Target Properties, and how fines, fees, and/or penalties may impact the ability to continue working and living within the

Kamilo Nui Valley. Mr. Vasquez remains in the dark on essentially all substantive details pertaining to the CA/FO, the Audit, and issues concerning Audit compliance.

Production of the Records identified herein is in the public interest because (1) they will provide information on the operations or activities of the EPA; (2) the information will contribute to public understanding of the Audit and LCCs, generally; (3) the Records will enhance public understanding, generally, and the understanding of the Kamilo Nui Valley tenants, in particular; and (4) there is great significance as to the disclosure of the Records where the absence of disclosure will result in continued lack of understanding and knowledge as to why the LCCs need to be removed and/or why (or why not) certain of the tenants may experience disproportionate impacts related to the removal of LCCs, for example, through the imputation of fines, fees, and/or penalties.

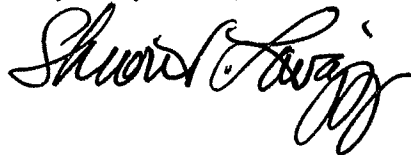
As to the second prong of the fee-waiver test, disclosure of the Records will not primarily benefit Mr. Vasquez. Rather, disclosure will benefit the public, generally, and the farming community that lives and works in the Kamilo Nui Valley, in particular.

Accordingly, we respectfully request, on Mr. Vasquez's behalf, that the Records be furnished without charge, or at a significantly reduced charge. If, however, this request is denied, then Mr. Vasquez asks that if fees incurred will exceed Five Hundred Dollars (\$500.00), that he be informed, through the undersigned, before you fill the request.

**D. Conclusion.**

If all or any part of this request is denied, please cite the specific exemption(s) which you think justifies your refusal to release the information. I would appreciate your handling this request as quickly as possible, and I look forward to hearing from you within 10 days.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Sharon V. Lovejoy", written in a cursive style.

Sharon V. Lovejoy



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

Eric Sonnenberg, General Counsel  
Office of the Vice President, Legal Group  
Kamehameha Schools  
567 South King Street, Suite 310  
Honolulu, HI 96813

~~0107 07 476~~  
SEP 28 2018

**Subject: Issuance of Consent Agreement and Final Order  
Kamehameha Schools  
EPA Docket No: UIC-09-2018-000B**

Dear Mr. Sonnenberg:

Enclosed please find the Consent Agreement and Final Order that has been issued with respect to the above-referenced matter. The U.S. Environmental Protection Agency Region IX Regional Judicial Officer has signed the Final Order and filed it with the Regional Hearing Clerk. The date it was filed by the Regional Hearing Clerk is the Effective Date of the Final Order. As stated in the Consent Agreement, your payment of \$99,531 is due within 30 days of the Effective Date. You must also comply with all other requirements according to the schedule in the Consent Agreement.

Thank you for your prompt attention to this matter and your ongoing cooperation. If you have any questions, please contact me at (415) 972-3302.

Sincerely,

A handwritten signature in black ink, appearing to read "Roberto Rodriguez".

Roberto Rodriguez, Chief  
Pesticides and Safe Drinking Water Enforcement

Enclosure

EXHIBIT 1

1 SYLVIA QUAST  
Regional Counsel  
2 United States Environmental Protection Agency, Region IX

3 KIMBERLY WELLS  
Attorney Advisor  
4 United States Environmental Protection Agency, Region IX

5 75 Hawthorne Street  
San Francisco, California 94105  
6 (415) 972-3056

7 Attorneys for Complainant

8  
9 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
10 **REGION IX**

75 Hawthorne Street  
San Francisco, California 94105

11 IN THE MATTER OF:

DOCKET NO. UIC-09-2018-0008

12  
13 Kamehameha Schools

14 Respondent.

**CONSENT AGREEMENT**  
**AND**  
**FINAL ORDER**

15 Proceedings under Sections 1423(c) of the  
Safe Drinking Water Act,  
16 42 U.S.C. §§ 300h-2(c).

17 **CONSENT AGREEMENT**

18 **I. AUTHORITIES AND PARTIES**

19 1. The United States Environmental Protection Agency ("EPA"), Region IX and  
20 Trustees of the Estate of Bernice Pauahi Bishop, doing business as Kamehameha Schools,  
21 ("Respondent") (collectively the "Parties") agree to settle this matter and consent to the filing of  
22 this Consent Agreement and Final Order ("CA/FO"). The CA/FO commences and concludes  
23 this proceeding in accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.45(b).

24 2. This is a civil administrative action brought by EPA Region IX against  
25 Respondent pursuant to Section 1423(c) of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. §

*In re Kamehameha Schools*

**\*\* FILED \*\***

**28SEP2018 - 11:00AM**

**U.S.EPA - Region 09**

1 300h-2(c), for violations of the SDWA and the Underground Injection Control ("UIC")  
2 requirements set forth at 40 C.F.R. Part 144.

3 3. Complainant is the Director of the Enforcement Division, EPA Region IX. The  
4 Administrator of EPA delegated to the Regional Administrator of EPA Region IX the authority  
5 to bring and settle this action under the SDWA. In turn, the Regional Administrator further  
6 delegated the authority to bring this action and sign a consent agreement settling this action  
7 under the SDWA to the Director of the Enforcement Division.

8 4. Respondent is a charitable trust headquartered at 567 South King Street,  
9 Honolulu, Hawai'i, 96813.

## 10 II. APPLICABLE STATUTES AND REGULATIONS

11 5. Pursuant to SDWA Sections 1421 to 1429, 42 U.S.C. §§ 300h to 300h-8, EPA has  
12 promulgated regulations at 40 C.F.R. Part 144 establishing minimum requirements for UIC  
13 programs to prevent underground injection that endangers drinking water sources.

14 6. "Underground injection" means the subsurface emplacement of fluids by well  
15 injection. 42 U.S.C. § 300h(d)(1); 40 C.F.R. § 144.3.

16 7. "Well injection" means the subsurface emplacement of fluids through a well. 40  
17 C.F.R. § 144.3.

18 8. "Well" means, in relevant part, a dug hole whose depth is greater than the largest  
19 surface dimension. 40 C.F.R. § 144.3.

20 9. A "cesspool" is a "drywell," which in turn is a "well," as those terms are defined  
21 in 40 C.F.R. § 144.3.

22 10. "Large capacity cesspools" ("LCCs") include "multiple dwelling, community or  
23 regional cesspools, or other devices that receive sanitary wastes, containing human excreta,  
24 which have an open bottom and sometimes perforated sides." 40 C.F.R. § 144.81(2). LCCs do

25 //

1 not include single-family residential cesspools or non-residential cesspools which receive solely  
2 sanitary waste and have the capacity to serve fewer than 20 persons per day. *Id.*

3 11. UIC program regulations classify LCCs as Class V UIC injection wells. 40 C.F.R.  
4 § 144.80(e).

5 12. Class V UIC injection wells are considered a “facility or activity” subject to  
6 regulation under the UIC program. 40 C.F.R. § 144.3.

7 13. “Owner or operator” means the owner or operator of any “facility or activity”  
8 subject to regulation under the UIC program. 40 C.F.R. § 144.3.

9 14. The “owner or operator” of a Class V UIC well must comply with Federal UIC  
10 requirements in 40 C.F.R. Parts 144 through 147, and must also comply with any other measures  
11 required by the owner’s and operator’s State or EPA Regional Office UIC Program to protect  
12 underground sources of drinking water. 40 C.F.R. § 144.82.

13 15. Owners or operators of existing LCCs were required to have closed those LCCs  
14 no later than April 5, 2005. 40 C.F.R. §§ 144.84(b)(2) and 144.88.

15 16. Pursuant to Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R.  
16 § 147.601, EPA administers the UIC program in the State of Hawai‘i. This UIC program consists  
17 of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

18 17. Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40  
19 C.F.R. § 19.4, EPA may issue an administrative order either assessing a civil penalty of not more  
20 than \$21,916 per day per violation up to a maximum of \$273,945, or requiring compliance, or  
21 both, against any person who violates the SDWA or any requirement of an applicable UIC  
22 program.

### 23 III. ALLEGATIONS

24 18. Respondent is an association and thus qualifies as a “person” within the meaning  
25 of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

1           19.     Respondent owns or leases at least 3,000 properties in the state of Hawai‘i, at  
2 least some of which contain LCCs.

3           20.     Between at least November 2012 and July 26, 2017, Respondent owned at least  
4 one LCC as that term is defined at 40 C.F.R. § 144.81(2).

5           21.     The LCC referenced in Paragraph 20 was located at 99-1622 Piimauna Drive,  
6 Volcano, HI 96785.

7           22.     Hawaiian International Sporting Club Inc., which leases the Property from  
8 Respondent and operates the Property, closed the LCC referenced in Paragraph 20 and replaced  
9 it with a septic system that was approved for use by the State of Hawai‘i Department of Health  
10 (“HDOH”) on July 26, 2017.

11          23.     The LCC referenced in Paragraph 20 was not closed by April 5, 2005.

12          24.     Respondent’s failure to close the LCC referenced in Paragraph 20 by April 5,  
13 2005 constitutes a violation of 40 C.F.R. §§ 144.84(b)(2) and 144.88.

#### 14                               IV. SETTLEMENT TERMS

##### 15           A. General Provisions

16          25.     For the purposes of this proceeding, Respondent (1) admits the jurisdictional  
17 allegations contained in this CA/FO; (2) neither admits nor denies the specific factual allegations  
18 contained in this CA/FO; (3) consents to the assessment of the penalty specified and to the  
19 specified compliance obligations contained in this CA/FO; and (4) and waives any right to  
20 contest the allegations or to the right to appeal the proposed final order accompanying the  
21 consent agreement. 40 C.F.R. § 22.18(b)(2).

22          26.     This CA/FO shall be the entire agreement between the Parties to resolve EPA’s  
23 civil claims and causes of action alleged under 40 C.F.R. §§ 144.84(b)(2) and 144.88. Full  
24 compliance with this CA/FO shall constitute settlement of Respondent’s liability for federal civil  
25 claims for the SDWA violations identified in Section III of this CA/FO.

1           27.     The provisions of this CA/FO shall apply to and be binding upon Respondent, its  
2 officers, directors, agents, servants, authorized representatives, employees, and successors or  
3 assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations  
4 acting under, through, or for Respondent shall not excuse any failure of Respondent to fully  
5 perform its obligations under this CA/FO.

6           28.     Issuance of this CA/FO does not in any manner affect the right of EPA to pursue  
7 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law,  
8 except with respect to those claims against Respondent described in Paragraph 24 that have been  
9 specifically resolved by this CA/FO.

10          29.     This CA/FO is not a permit or modification of a permit, and does not affect  
11 Respondent's obligation to comply with all federal, state, local laws, ordinances, regulations,  
12 permits, and orders. Issuance of, or compliance with, this CA/FO does not waive, extinguish,  
13 satisfy, or otherwise affect Respondent's obligation to comply with all applicable requirements  
14 of the SDWA, regulations promulgated thereunder, and any order or permit issued thereunder,  
15 except as specifically set forth herein.

16          30.     EPA reserves any and all legal and equitable remedies available to enforce this  
17 CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in  
18 any actions against Respondent for noncompliance with this CA/FO.

19          31.     Unless otherwise specified, the Parties shall each bear their own costs and  
20 attorneys' fees incurred in this proceeding.

21          32.     This CA/FO may be executed and transmitted by facsimile, email or other  
22 electronic means, and in multiple counterparts, each of which shall be deemed an original, but all  
23 of which shall constitute an instrument. If any portion of this CA/FO is determined to be  
24 unenforceable by a competent court or tribunal, the Parties agree that the remaining portions  
25 shall remain in full force and effect.

1           33.     The undersigned representative of each party certifies that he or she is duly and  
2 fully authorized to enter into and ratify this CA/FO.

3           B. Penalty

4           34.     Respondent agrees to the assessment of a civil penalty in the amount of ninety-  
5 nine thousand five hundred and thirty-one dollars (\$99,531) for the violation of the SDWA at 99-  
6 1622 Piimauna Drive, Volcano, HI 96785, alleged in Section III of this CA/FO.

7           35.     Respondent shall pay the assessed penalty no later than thirty (30) days from the  
8 Effective Date of this CA/FO.

9           36.     Respondent may pay the penalty by check (mail or overnight delivery), wire  
10 transfer, automated clearing house, or online payment. Payment instructions are available at:  
11 <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified  
12 check must be payable to the order of "Treasurer, United States of America" and delivered to the  
13 following address:

14                   U.S. Environmental Protection Agency  
15                   Fines and Penalties  
16                   Cincinnati Finance Center  
17                   P.O. Box 979077  
18                   St. Louis, Missouri 63197-9000

19           37.     Concurrent with making the payment pursuant to Paragraphs 34 through 36,  
20 Respondent must provide a letter with evidence of the payment and the title and docket number  
21 of this action, to the EPA Region IX Regional Hearing Clerk, via United States mail, at:

22                   Regional Hearing Clerk  
23                   U.S. Environmental Protection Agency  
24                   Region IX - Office of Regional Counsel  
25                   75 Hawthorne Street (ORC-1)  
                    San Francisco, CA 94105

Respondent shall also send copies of the letter to the EPA Region IX Enforcement Division  
Enforcement Officer and the EPA Region IX Office of Regional Counsel attorney in accordance  
with Paragraph 66.

1           38.     In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13,  
2 interest, penalty charges, and administrative costs will be assessed against the outstanding  
3 amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative  
4 penalty by the deadline specified in Paragraph 35.

5           39.     Interest on delinquent penalties will be assessed at an annual rate that is equal to  
6 the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan  
7 account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register  
8 and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1).

9           40.     A penalty charge will be assessed on all debts more than 90 days delinquent. The  
10 penalty charge will be at a rate of 6% per annum and will be assessed monthly. 40 C.F.R. §  
11 13.11(c).

12           41.     In addition, administrative costs for handling and collecting Respondent's  
13 overdue debt will be assessed based on either actual or average cost incurred, and will include  
14 both direct and indirect costs. 40 C.F.R. § 13.11(b).

15           42.     Failure to pay any civil administrative penalty by the deadline may also lead to  
16 any or all of the following actions:

- 17               a.     The debt being referred to a collection agency, a credit reporting agency, or to  
18                      the Department of Justice for filing of a collection action in the appropriate  
19                      United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any  
20                      such collection action, the validity, amount, and appropriateness of the  
21                      assessed penalty and of this CA/FO shall not be subject to review.
- 22               b.     The department or agency to which this matter is referred (e.g., the  
23                      Department of Justice, the Internal Revenue Service) may assess  
24                      administrative costs for handling and collecting Respondent's overdue debt in  
25                      addition to EPA's administrative costs.

- 1 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or  
2 (ii) suspend or disqualify Respondent from doing business with EPA or  
3 engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.

4 43. Respondent shall tender any interest, handling charges, late penalty payments, and  
5 stipulated penalties in the same manner as described in Paragraphs 36 and 37.

6 C. Compliance

7 44. Respondent shall perform a compliance audit ("Audit") of its properties in the  
8 state of Hawai'i to identify and close all identified LCCs.

9 45. EPA and Respondent agree that violations reported or otherwise disclosed to  
10 EPA and corrected under, and in accordance with, this CA/FO and the applicable provisions of  
11 EPA's Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of  
12 Violations ("Audit Policy"), 65 Fed. Reg. 19,618 (Apr. 11, 2000), shall be eligible for 100%  
13 mitigation of gravity-based penalties. The parties further agree that this CA/FO is intended to  
14 serve the objectives of, and be interpreted in harmony with, the Audit Policy. In the event of an  
15 actual or perceived conflict between the terms of this CA/FO and of the Audit Policy, the parties  
16 agree that the terms of this CA/FO shall prevail in regard to whether or not the criteria set forth  
17 in the Audit Policy have been met.

18 46. The Audit shall comply with the following requirements:

- 19 a. Scope: All Target Properties must be inspected pursuant to Subparagraph d of  
20 this Paragraph and an inspection report that addresses each Target Property must  
21 be prepared pursuant to Paragraph 47. All LCCs identified shall be closed in  
22 accordance with Paragraph 48. The following definitions apply:

- 23 i. Target Properties: This includes all properties owned or leased by  
24 Respondent in Hawai'i that contain or potentially contain an LCC and are  
25 not otherwise excluded as Non-Target Properties. All Properties owned

1 and/or operated by Respondent in the state of Hawai'i shall be treated as  
2 Target Properties for purposes of this Audit unless Respondent finds  
3 sufficient documentation that the property is properly classified as a Non-  
4 Target Properties pursuant to Subparagraph a.ii of this Paragraph.

5 ii. Non-Target Properties: Non-Target Properties include those that (A) are  
6 connected to a sewer system; (B) contain an on-site wastewater treatment  
7 facility permitted by HDOH; (C) contain an HDOH-permitted Individual  
8 Wastewater System ("IWS") that is not a cesspool; (D) are vacant; or (E) are  
9 residential properties that contain one or fewer single-family residences or  
10 are non-residential properties that have the capacity to serve not more than  
11 19 persons per day.

12 iii. Sufficient Documentation: Respondent shall rely on Sufficient  
13 Documentation that a particular property is a Non-Target Property and does  
14 not otherwise contain an LCC. Sufficient documentation means:

15 A. For Properties connected to a sewer: written confirmation of the  
16 connection from the county or private sewer operator; building plans  
17 documenting the connection to a county or private sewer system; or  
18 a sewer bill from the past year.

19 B. For properties that contain an on-site wastewater treatment system:  
20 an HDOH permit or written documentation from HDOH of approval  
21 to operate the wastewater treatment system.

22 C. For properties that contain a non-cesspool IWS: an IWS permit from  
23 HDOH or written documentation from HDOH showing that the IWS  
24 is permitted.  
25

1 D. For vacant properties: a "Building Value" of zero according to  
2 government tax records as of the Effective Date of this CA/FO.

3 E. For properties that contain one or fewer single-family residences and  
4 non-residential properties that have the capacity to serve not more  
5 than 19 persons per day: a Tax Map Key code showing that the  
6 property contains one or fewer single-family residences, or a  
7 certified statement from a representative of Respondent.

8 iv. Respondent shall submit for EPA's approval a list of Target and Non-Target  
9 Properties. Each list must be certified pursuant to Paragraph 68. Target  
10 Properties shall be identified by address, Tax Map Key, and land use  
11 classification. Non-Target Properties shall be separated into the five  
12 categories listed in Paragraph 46.a.ii. EPA will respond within 14 days to  
13 notify Respondent if it disapproves of the non-target determination for any  
14 property. If EPA disapproves a non-target determination, the property is a  
15 Target Property and must be inspected pursuant to Subparagraph d of this  
16 Paragraph. Respondent claims all information submitted pursuant to this  
17 Subparagraph and Paragraph 49 (except for government-generated  
18 documents) as Confidential Business Information (CBI) in accordance with  
19 40 C.F.R. § 2.204 and Section I.I.3 of the Audit Policy, 65 Fed. Reg.  
20 19,624, and EPA agrees to not publicly release such information until such  
21 time as a final CBI determination is made in accordance with the procedures  
22 set forth at 40 C.F.R. Part 2. At that point, EPA will treat the information  
23 consistent with the requirements of 40 C.F.R Part 2. EPA will also treat this  
24 information consistent with the protections identified in the Memorandum  
25

1 from Assistant Administrator Steven A. Herman entitled “Confidentiality of  
2 Information Received Under Agency’s Self-Disclosure Policy.”

- 3 v. Respondent shall, at EPA’s request, make available the documentation  
4 relied upon. With the exception of information obtained through databases  
5 maintained by a government entity, Respondent shall maintain the  
6 documentation relied upon until the Audit is complete and at least 3 years  
7 after any violations identified have been resolved by formal settlement in  
8 accordance with the Audit Policy, 65 Fed. Reg. 19,624 and 19,626. Where  
9 Respondent obtains information through databases maintained by a  
10 government entity, Respondent shall provide EPA with the name of the  
11 database and a certified statement from a representative of Respondent  
12 documenting when the information was obtained.

13 b. Independent Third-Party Auditor

- 14 i. Inspection of all Target Properties pursuant to Subparagraph d of this  
15 Paragraph shall be conducted by an independent third-party auditor (the  
16 “Auditor”) who has experience with LCCs. Respondent shall have the  
17 Auditor: supervise the preparation of and sign the Inspection Phase  
18 Completion Reports as required by Paragraph 47 of this CA/FO; and  
19 prepare and sign the Final LCC Closure Reports as required under  
20 Paragraph 49 of this CA/FO.
- 21 ii. Recordkeeping: Respondent shall include in its written agreement with  
22 the Auditor a provision requiring the Auditor to prepare and maintain  
23 contemporaneous records when supervising or assisting in the conduct of  
24 the Audit. The Auditor’s records of the Audit shall be made available to  
25 EPA upon request.

1                   iii. Approval of Auditor: No later than thirty (30) calendar days following the  
2                   Effective Date of this CA/FO, Respondent shall notify EPA in writing of  
3                   Respondent's choice of the Auditor, and provide a curriculum vitae and  
4                   list of past cesspool projects performed by the proposed Auditor. At its  
5                   sole discretion, EPA may approve or disapprove Respondent's choice of  
6                   the Auditor, but such approval shall not be unreasonably withheld.  
7                   Within fifteen (15) calendar days of EPA's receipt of Respondent's notice  
8                   of its choice of an Auditor, EPA will respond in writing to Respondent's  
9                   nomination. If EPA notifies Respondent that Respondent's choice of an  
10                  Auditor is unacceptable, Respondent shall have additional thirty (30)  
11                  calendar days in which to nominate a different Auditor, and to provide the  
12                  information required by this Paragraph.

13              c. Inspection Schedule:

- 14              i. Inspections will be conducted in three phases: (I) Oahu; (II)  
15              Kauai/Maui/Molokai ("KMM"); and (III) the Island of Hawai'i ("Big  
16              Island"). The term "Audit" as used herein refers collectively to all three  
17              phases. All Target Properties will be subject to the Audit.
- 18              ii. For Phase I (Oahu):
- 19                  A. Within thirty (30) calendar days of the effective date for this CA/FO,  
20                  Respondent shall submit to EPA a list of Target and Non-Target  
21                  Properties in Oahu, pursuant to Paragraph 46.a.iv.
- 22                  B. The Phase I Inspection completion date shall be seventy-four (74)  
23                  calendar days from submission to EPA of the Target and Non-Target  
24                  Properties list for Oahu. However, if the number of Target  
25                  Properties in Oahu is greater than 100, then Respondent may submit

1 a proposed project schedule for EPA's approval. The proposed  
2 project schedule shall be submitted with the list of Target and Non-  
3 Target Properties for Oahu.

4 iii. For Phase II (KMM):

5 A. Within sixty (60) calendar days of the effective date for this CA/FO,  
6 Respondent shall submit to EPA for approval a list of Target and  
7 Non-Target Properties for KMM, pursuant to Paragraph 46.a.iv.

8 B. The Phase II Inspection Completion Date shall be seventy-four  
9 calendar (74) days from submission to EPA of the Target and Non-  
10 Target Properties list for KMM.

11 iv. For Phase III (Big Island):

12 A. Within one hundred and eighty (180) calendar days of the effective  
13 date for this CA/FO Respondent shall submit to EPA for approval a  
14 list of Target and Non-Target Properties for the Big Island, pursuant  
15 to Paragraph 46.a.iv.

16 B. The Phase III Inspection completion date shall be seventy-four (74)  
17 calendar days from submission to EPA of the Target and Non-Target  
18 Properties list for the Big Island. However, if the number of Target  
19 Properties on the Big Island is greater than 60, then Respondent may  
20 submit a proposed project schedule for EPA's approval. The  
21 proposed project schedule shall be submitted with the list of Target  
22 and Non-Target Properties for the Big Island.

23 d. Inspection Procedures:

24 i. In each phase, the Auditor shall inspect supervise the inspection of each of  
25 the Target Properties for the presence of an LCC. Each inspection shall

1 include an on-site visual inspection of the Target Property. Additionally,  
2 inspections may include, but are not limited to, a review of property  
3 records, permits, water use records, and/or other documentation, and  
4 interviews with employees of Respondent, occupants, tenants and/or  
5 lessees, as needed to confirm the presence (or absence) and location of an  
6 LCC.

- 7 ii. All work will be in accordance with accepted standards of professional  
8 engineering procedures as practiced by members of the local engineering  
9 profession currently practicing in Hawai'i under similar conditions.

10 **47. Inspection Phase Completion Reports:**

- 11 a. For each phase of inspections, the Auditor shall prepare a separate Inspection  
12 Phase Completion Report documenting the findings of the inspections of the  
13 Target Properties in that phase. The Inspection Phase Completion Report shall  
14 include:
- 15 i. A description of how the Audit Procedures were followed in completing that  
16 phase of the Audit.
- 17 ii. The number of LCCs located on Target Properties as a result of that phase  
18 of the Audit, a description of each LCC, and a description of how the LCC  
19 was identified and/or confirmed.
- 20 iii. For those Target Properties that were determined not to contain an LCC, a  
21 description of how it was determined that the property did not contain an  
22 LCC and what, if any, other wastewater treatment system is being used.
- 23 b. The Phase I Inspection Completion Report shall be submitted within sixty (60)  
24 days of the Oahu Inspection completion date.
- 25

1 c. The Phase II Inspection Completion Report shall be submitted within sixty (60)  
2 days of the KMM Inspection completion date.

3 d. The Phase III Inspection Completion Report shall be submitted within sixty (60)  
4 days of the Big Island Inspection completion date.

5 48. LCC Closures and Schedule:

6 a. With the Inspection Phase Completion Report for each phase, Respondent shall  
7 also submit for EPA's approval a plan and schedule for closure of any LCCs  
8 identified.

9 b. LCCs shall be closed as soon as possible subject to Section G of this CA/FO.  
10 Construction plans for an IWS shall be prepared and submitted to HDOH for  
11 approval or Respondent must apply for a sewer connection within thirty (30)  
12 days of submission of the Inspection Phase Completion Report for the phase in  
13 which the LCC was identified.

14 c. LCCs shall be closed in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a)  
15 and 144.89(a), and all applicable federal, state, and local closure requirements.

16 49. Final LCC Closure Reports: Within ten (10) days of obtaining HDOH approval  
17 of the Backfill Closure Report for each identified LCC, the Auditor shall submit a Final LCC  
18 Closure Report briefly describing and documenting completion of the LCC closure steps to EPA  
19 that includes, at a minimum, the following:

20 a. HDOH permit to operate an IWS or approval to connect to sewer;

21 b. A copy of the approved LCC backfill closure report; and

22 50. The Audit shall not affect EPA's right to bring a claim or cause of action other  
23 than those specified in Section III of this CA/FO, including a claim or cause of action for an  
24 LCC violation that could have been, but was not, reported and closed as part of the Audit.

25 51. Respondent shall bear all costs associated with the Audit.

1           D.     Third-Party Landowners and Lessees

2           52.     Any owner or operator of a Class V well, including an LCC, is liable for violation  
3 of the SDWA pursuant to 40 CFR 144.81. The Parties anticipate that at least some properties  
4 within the scope of the Audit are owned or operated by third parties, including, *e.g.*, lessees.

5           53.     This CA/FO does not alter the rights, obligations, or liabilities of any party other  
6 than EPA or Respondent.

7           E.     Transfer of Ownership or Operation of Properties

8           54.     In the event Respondent transfers ownership, title, or control of any real property  
9 that it owns or leases as of the Effective Date of this CA/FO prior to the completion of the Audit,  
10 Respondent shall determine whether the property is a Target Property as defined in Paragraph  
11 46.a.i.

12          55.     Prior to transfer of ownership, title, or control of any Target Property owned or  
13 leased by Respondent, the Auditor must conduct an inspection of the property in accordance with  
14 Paragraph 46.d to determine whether the property contains an LCC and must prepare and submit  
15 to EPA an inspection report in accordance with Paragraph 47.a.

16          56.     Respondent shall close any LCC on such property in accordance with Paragraph  
17 48 prior to transfer, except where Respondent has provided EPA with a plan and schedule and  
18 has obtained written approval from EPA to close the LCC in accordance with Paragraph 48 after  
19 the transfer of ownership, title, or control.

20          F.     Stipulated Penalties

21          57.     If Respondent fails to pay the assessed civil administrative penalty specified in  
22 Paragraph 34 by the deadline specified in Paragraph 35, Respondent agrees to pay in addition to  
23 the assessed penalty, a stipulated penalty of \$250 per day for each day the payment is late.

24          58.     Respondent agrees to pay any stipulated penalties within thirty (30) days of  
25 receipt of EPA's written demand for such penalties. All penalties shall begin to accrue on the

1 first date of noncompliance, and shall continue to accrue through the date of completion of the  
2 delinquent CA/FO requirement. Respondent will use the method of payment specified in  
3 Paragraphs 36 and 37, and agrees to pay interest, handling charges and penalties that accrue for  
4 late payment of the stipulated penalty in the same manner as set forth in Paragraphs 38 through  
5 43.

6 59. Neither the demand for, nor payment of, a stipulated penalty relieves Respondent  
7 of its obligation to comply with any requirement of this CA/FO or modifies or waives any  
8 deadlines set forth in this CA/FO.

9 60. EPA may, in the unreviewable exercise of its discretion, elect to pursue any other  
10 administrative or judicial remedies in addition to or in lieu of assessing stipulated penalties  
11 and/or reduce or waive stipulated penalties due under this CA/FO.

12 G. Force Majeure

13 61. For purposes of this CA/FO, *force majeure* is defined as any event arising from  
14 causes that are beyond the control of Respondent, any entity controlled by Respondent, or  
15 Respondent's contractors, which delays or prevents the performance of any obligation under this  
16 CA/FO despite Respondent's reasonable best efforts to fulfill the obligation. The requirement  
17 that Respondent exercise "reasonable best efforts to fulfill the obligation" includes using  
18 reasonable best efforts to anticipate any potential *force majeure* event and reasonable best efforts  
19 to address the effects of any such event (a) as it is occurring and (b) after it has occurred to  
20 prevent or minimize any resulting delay to the greatest extent possible. Examples of *force*  
21 *majeure* events include, but are not limited to, unforeseen environmental, geological, or  
22 archaeological conditions; delays caused by necessary government approvals, labor or equipment  
23 shortage, and delays caused by third-party tenants or landowners. Examples of events that are not  
24 *force majeure* include, but are not limited to, increased costs or expenses of any work to be  
25 performed under this CA/FO and normal inclement weather.

1           62.     If any event occurs that causes or is likely to cause delay in the achievement of  
2 any requirement or time frame specified in this CA/FO, Respondent shall notify EPA in writing,  
3 within ten (10) business days after learning of such event, of the anticipated length and cause of  
4 the delay, whether Respondent believes the delay or anticipated delay constitutes a *force majeure*  
5 event, as defined in Paragraph 61, the measures Respondent has taken and/or will take to prevent  
6 or minimize the delay, and the timetable by which Respondent intends to implement these  
7 measures and achieve the requirement or meet the time frame. Respondent shall adopt all  
8 reasonable measures to avoid or minimize delay. Submittal of the notice to EPA required by this  
9 paragraph does not by itself extend the deadline or timeframe for any requirement specified in  
10 this CA/FO.

11           63.     If, upon receiving the notice required under Paragraph 62, EPA agrees that the  
12 delay or anticipated delay in compliance with this CA/FO has been or will be caused by  
13 circumstances that constitute a *force majeure* event as defined in Paragraph 61, EPA may grant  
14 an extension of time for compliance for a period of time no longer than any delay resulting from  
15 the circumstances causing the delay or anticipated delay.

16           64.     Respondent has the burden of demonstrating that the actual or anticipated delay  
17 has been or will be caused by a *force majeure* event, that the duration of the delay was or will be  
18 warranted under the circumstances, that Respondent exercised or is using its best efforts to avoid  
19 and mitigate the effects of the delay or anticipated delay, and that Respondent complied with the  
20 requirements of this CA/FO.

21           65.     In the event that EPA does not agree that a delay or anticipated delay in achieving  
22 compliance with the requirements of this CA/FO have been or will be caused by a *force majeure*  
23 event, EPA will notify Respondent in writing of EPA's decision and the delay or anticipated  
24 delay will not be excused.

25     //

1 H. Notices

2 66. Unless otherwise specified elsewhere in this CA/FO, all written communications  
3 required by this CA/FO shall be addressed as follows:

4 For EPA:

5 Jelani Shareem, Enforcement Officer  
6 U.S. Environmental Protection Agency  
7 Region IX - Enforcement Division  
8 75 Hawthorne Street (ENF-3-3)  
9 San Francisco, CA 94105

10 Kimberly Wells, Attorney Advisor  
11 U.S. Environmental Protection Agency  
12 Region IX – Office of Regional Counsel  
13 75 Hawthorne Street (ORC-2-3)  
14 San Francisco, CA 94105

15 For Respondent:

16 Sheryl Nicholson, Assistant General Counsel  
17 Office of the Vice President, Legal Group  
18 Kamehameha Schools  
19 567 South King Street, Suite 310  
20 Honolulu, HI 96813

21 For each written communication and/or submittal, Respondent shall identify the case name, the  
22 case Docket Number, and the paragraph and/or requirement of this CA/FO under which the  
23 submission is being made.

24 67. Respondent shall submit to EPA such additional documents and information as  
25 EPA may reasonably request to determine Respondent's compliance with this CA/FO.

68. Respondent shall include the following signed certification made in accordance  
with 40 C.F.R. § 144.32(b) and (d) with all written communications required by this CA/FO:

*I certify under penalty of law that this document and all attachments  
were prepared under my direction or supervision in accordance with  
a system designed to assure that qualified personnel properly gather  
and evaluate the information submitted. Based on my inquiry of the  
person or persons who manage the system, or those persons directly  
responsible for gathering the information, the information submitted*

*In re Kamehameha Schools*

1 is, to the best of my knowledge and belief, true, accurate, and  
2 complete. I am aware that there are significant penalties for  
3 submitting false information, including the possibility of fine and  
4 imprisonment for knowing violations.


5 V. EFFECTIVE DATE

6 69. Pursuant to 40 C.F.R. § 22.45, this CA/FO will be subject to public notice and  
7 comment at least 40 days prior to it becoming effective through the issuance of the final order by  
8 the Regional Judicial Officer.

9 70. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be  
10 effective on the date that the final order contained in this CA/FO, having been approved and  
11 issued by either the Regional Judicial Officer or Regional Administrator, is filed with the  
12 Regional Hearing Clerk.


13 FOR THE CONSENTING PARTIES:

14 KAMEHAMEHA SCHOOLS:

15   
16 Eric Sonnenberg, General Counsel  
17 Office of the Vice President, Legal Group  
18 Kamehameha Schools  
19 567 South King Street, Suite 310  
20 Honolulu, HI 96813

Date: August 14, 2018

21 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

22   
23 Kathleen H. Johnson  
24 Director, Enforcement Division, Region IX  
25 U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

Date: 8/17/18

//

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*In re Kamehameha Schools*

1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
2 REGION IX

75 Hawthorne Street  
San Francisco, California 94105

3 IN THE MATTER OF: ) DOCKET NO. UIC-09-2018- 0008  
4 )  
Kamehameha Schools )  
5 Respondent. )  
6 )  
7 Proceedings under Sections 1423(c) of the )  
Safe Drinking Water Act, )  
42 U.S.C. §§ 300h-2(c). )

CONSENT AGREEMENT  
AND  
FINAL ORDER

8 **FINAL ORDER**

9 The United States Environmental Protection Agency Region IX ("EPA"), and Trustees of  
10 the Estate of Bernice Pauahi Bishop, doing business as Kamehameha Schools, ("Respondent"),  
11 having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the  
12 Stipulations and Findings and Final Order regarding the matters alleged therein,  
13


14 IT IS HEREBY ORDERED THAT:

15 1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-  
16 2018- 0008 ) be entered;

17 2. Respondent pay an administrative civil penalty of **\$99,531** dollars to the Treasurer  
18 of the United States of America in accordance with the terms set forth in the Consent Agreement;

19 3. Respondent comply with all other requirements of the Consent Agreement.

20 This Final Order is effective on the date that it is filed. This Final Order constitutes full  
21 adjudication of the allegations in the Consent Agreement entered into by the Parties in this  
22 proceeding.

23   
24 Steven L. Jawgiel  
25 Regional Judicial Officer, Region IX  
U.S. Environmental Protection Agency

Date: 09/27/18

*In re Kamehameha Schools*

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**CERTIFICATE OF SERVICE**

I hereby certify that the forgoing FINAL ORDER incorporating a CONSENT AGREEMENT in the matter of Kamehameha Schools (UIC-09-2018-0008), dated Sept. 27, 2018, was filed with the Regional Hearing Clerk and sent.

FIRST CLASS MAIL - CERTIFIED

Tracking Numbers: 7015 3010 0000 3883 7899

Respondent

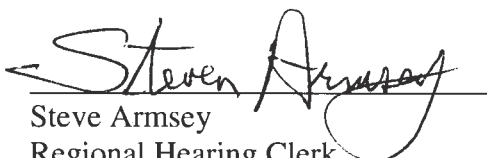
Eric H. Sonnenberg, General Counsel  
Office of the Vice President, Legal Group  
Kamehameha Schools  
567 South King Street, Suite 310  
Honolulu, HI 96813

HAND DELIVERED

EPA Region IX Attorney:

Kimberly Wells  
Attorney Advisor  
Office of Regional Counsel (ORC-2-3)  
United States Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

Dated at San Francisco, California. Sept. 28, 2018

  
Steve Armsey  
Regional Hearing Clerk  
U.S. EPA, Region 9